

**COMMONWEALTH OF MASSACHUSETTS**  
**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

**D.T.E. 04-1**

**Investigation by the Department of Telecommunications and Energy  
regarding the assignment of interstate pipeline capacity pursuant to  
Natural Gas Unbundling, D.T.E. 98-32-B (1999).**

**Reply Comments of The Berkshire Gas Company**

**March 29, 2004**

The Berkshire Gas Company ("Berkshire" or the "Company") appreciates the opportunity to offer reply comments with respect to the Department's ongoing evaluation of the current competitiveness of the upstream capacity market in docket D.T.E. 04-1. Berkshire filed initial comments on this matter on March 1, 2004 in accordance with the procedural schedule established by the Department for this proceeding. Specifically, the Company's comments focused on the merits of maintaining the existing mandatory approach to capacity assignment established in D.T.E. 98-32-B at 35,40 (1999) and responded to the Department's specific inquiries. The Company's Initial Comments demonstrated that the factors that were the basis for the Department's decision to implement a program of mandatory capacity assignment have not changed materially in the three years since the Department's decision. Berkshire also explained how a departure from the Department's well-reasoned precedent would expose a wide range

of customers to a serious and substantial reliability risk. Moreover, such a change might result in substantial cost subsidies being imposed. Berkshire continues to believe that the Department should maintain the current mandatory, slice of the system approach to capacity assignment and assess the upstream capacity market again to see if a change is warranted in an additional three to five years.

These reply comments address limited points raised within the initial comments of other parties that were submitted in this proceeding. The Company notes that the failure to address particular arguments of other commentators should not be considered as an acceptance of such arguments.

Berkshire submits that the fundamental conclusion from the Department's decision in D.T.E. 98-32-B was that the upstream capacity market was not yet "workably competitive." This lack of competition did not "allow" the removal of traditional regulatory controls. D.T.E. 98-32-B, p. 27. More recent developments affecting the New England natural gas market have been mixed in terms of any conclusion as to whether there is sufficient competition to allow the removal of current regulatory structures. Recent experience during peak demand suggests that while the pipeline infrastructure was adequate, in its current state, for LDC's to maintain system reliability, there remains a real and serious concern as to the lack of sufficient alternative parties with firm contract rights. Moreover, while new pipelines from Canada are now serving the region, results from Canadian gas exploration efforts have been mixed. Indeed, this fundamental point is acknowledged by the documents of marketers, albeit in the context of criticism of the Department's current policies. See e.g., Hess Initial Comments, p.9.

As acknowledged by the Department, system reliability is a cornerstone of a local distribution company's service obligation. The Department has identified reliability as an essential regulatory criterion, citing that in any effort to advance a workably competitive market, "we must ensure . . . that all customers in the Commonwealth will continue to receive reliable service." See D.T.E. 98-32-B p. 25 (1999). Berkshire notes that more recent concerns with failures and bankruptcies in the energy industry suggest that greater scrutiny may be in order in evaluating the level of competition in the market. In any event, Berkshire submits that a clear statement by the Department as to the nature of LDC's planning obligations for a definite period (e.g., at least three to five years) is needed. Berkshire and other LDC's must balance reliability and cost considerations, and any departure from the Department's past policy of providing clear and definite direction may harm natural gas consumers in the Commonwealth.

Berkshire further submits that mandatory, slice of the system, is the sole approach to capacity assignment that ensures the ability of LDC's to maintain least-cost reliable service. First, as described in KeySpan's initial comments, mandatory capacity assignment provides an LDC with the necessary recall rights to the capacity it releases to marketers. This recall capability is a critical function, particularly in light of the recent volatility of energy markets and economic failures of numerous market participants. If the marketer fails to perform, the LDC has access to the released capacity which permits the continued provision of reliable service to the customer. Second, the mandatory approach to capacity assignment ensures reliability as it requires capacity assigned for migrating customers to be returned to the LDC if the customer

subsequently requests default service. This phenomenon, known as “Reverse Migration” is also addressed in Bay State’s initial comments and has been experienced by Berkshire. Under the voluntary approach to capacity, LDCs may attempt to mitigate the costs of unelected capacity through permanent or multi-month releases without recall rights. Under this scenario, the capacity to serve reverse migration customers would no longer be available, an outcome that Berkshire submits is not likely in line with customer expectations and could result in serious public health concerns.

Mandatory capacity assignment is also equitable in that it provides that customers are required to pay for only those costs incurred in order to serve them. In its original order, the Department found that the mandatory capacity assignment precludes remaining firm sales customers from bearing the burden of non-mitigable stranded costs. Berkshire agrees with the Department and cited in its initial comments that under the current mandatory approach the costs of long-term capacity contracts entered into by the Company, and approved by the Department, are not inappropriately assigned to non-migrating customers. In addition, mandatory capacity assignment provides parity between an LDC’s costs and a marketer’s costs.

Berkshire also submits that the Department should also maintain the “slice-of-system” approach to allocate capacity costs. Alternatives, such as the “path” approach, while perhaps artificially enhancing the prospects for marketers, enable such marketers to avoid “assuming their share of existing capacity commitments.” D.T.E. 98-32-B, p. 34. These costs must, in turn, be supported by non-migrating customers that may have limited practical alternatives for gas service.

In conclusion, Berkshire believes that the Department's current mandatory approach to LDC capacity should remain unchanged. As stated in the Company's initial comments, any variation in the Department's approach exposes a wide range of customers to substantial risk in terms of reliability of service and may result in substantial cost subsidies. Berkshire encourages the Department to clearly articulate that these standards shall be maintained subject, perhaps, to a future review of the continuing progress of the development of the natural gas market.